

SUMMARY OF PREFILED TESTIMONY
OF
BARBARA MALLET

PUD 200300646

(Track 3b – Dedicated Transport)

Application of Joyce E. Davidson, Director of the Public Utilities Division, Oklahoma Corporation Commission, to Initiate a Proceeding for the Implementation of the Federal Communications Commission’s Triennial Review Order

Staff recommends that this Commission find that no dedicated transport routes in Oklahoma currently meet the triggers set by the FCC.

As stated in paragraph 359 of the TRO, the FCC found impairment as follows:

- OCn Transport – no impairment without access to unbundled OCn transport facilities.
- Dark Fiber Transport – impairment without access to unbundled dark fiber transport facilities, subject to both a granular route-based review by the states to identify available wholesale facilities and to identify where transport facilities can be deployed.
- DS3 Transport – impairment without access to unbundled DS3 transport facilities, subject to both a granular route-based review by the states to identify available wholesale facilities and to identify where transport facilities can be deployed.
- DS1 Transport – impairment without access to unbundled DS3 transport facilities, subject to both a granular route-based review by the states to identify available wholesale facilities and to identify where transport facilities can be deployed.

The first trigger (“the self-deployment trigger”) is designed to identify routes along which the ability to self-provide transport facilities is evident based on the existence of several competitive transport facilities. Specifically, where three or more competing carriers, not affiliated with each other or the incumbent LEC, each have deployed non-ILEC transport facilities along a specific route, regardless of whether these carriers make transport available to other carriers, the FCC found that to be sufficient evidence that competing carriers are capable of self-deploying. In paragraph 409 of the TRO, the FCC stated that this trigger should not apply at the DS1 level.

The second trigger (“the wholesale trigger”) is designed to identify where competitive wholesale alternatives are available. Specifically, the FCC found that competing carriers are not impaired where they have available two or more alternative transport providers, not affiliated with each other or the incumbent LEC, immediately capable and willing to provide transport at a specific capacity along a given route between ILEC switches or wire centers.

The third trigger (“the potential route trigger”) is explained in paragraph 410 of the TRO.

... when conducting its analysis, a state must consider and may also find no impairment on a particular route that it finds is suitable for “multiple, competitive supply,” but along which this trigger is not facially satisfied. States must expressly base any such decision on the following economic characteristics:

- local engineering costs of building and utilizing transmission facilities;
- the cost of underground or aerial laying of fiber;
- the cost of equipment needed for transmission;
- installation and other necessary costs involved in setting up service;
- local topography such as hills and rivers;
- availability of reasonable access to rights-of-way;
- the availability or feasibility of alternative transmission technologies with similar quality and reliability;
- customer density or addressable market; and
- existing facilities-based competition.

If a state commission finds no impairment for a specific capacity of transport on a route, the incumbent LEC will no longer be required to unbundle transport along that route, according to the transition schedule adopted by the state commission. However, paragraph 411 of the TRO allows state commissions latitude in a finding of no impairment. The FCC stated:

In other instances, by contrast, states may identify impairment on specific routes that facially satisfy the self-provisioning trigger, but where some significant barrier to entry exists such that deploying additional facilities is entirely foreclosed.

The three CLECs that SBC identified as potentially having met at least one of the FCC’s triggers were Cox Oklahoma Telcom, LLC (“Cox”), MCImetro Access Transmission Services, Inc. (“MCI”) and Xspedius Management Company, LLC (“Xspedius”). In his testimony, Gary Smith identified three routes that he believes fulfill the FCC’s self-deployment trigger and seven routes that he believes meet the FCC’s wholesale trigger. Staff investigated each of these routes, as well as all other routes reported by SBC and by the CLECs identified by SBC as having self-

deployed dedicated transport routes in their responses to Staff's data requests. Staff does not believe that any routes in Oklahoma meet any of the FCC's three triggers at this time.